



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	Enrolled	Bill No:	AB 1029
Tax:	Property	Author:	J. Horton
Related Bills:	SB 397 (Escutia)		

### BILL SUMMARY

The bill modifies a number of provisions related to legal entity change in ownership discovery and reporting procedures.

### ANALYSIS

#### Current Law

**Legal Entity Change in Ownership.** Under existing property tax law, real property is reassessed to its current fair market value only when there is a “change in ownership.” (*Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5*)

Revenue and Taxation Code Section 64 sets forth the change in ownership provisions related to the purchase or transfer of **ownership interests in legal entities** that own real property. Generally, when real property is owned by a legal entity, the purchase or transfer of ownership interests in that legal entity does not trigger a change in ownership of the property. An exception to this general rule is if there is a “change in control” of the legal entity. Subdivision (c) of Section 64 generally provides that a “change in control” occurs when one person or legal entity acquires more than 50 percent of the ownership interests in the legal entity. In addition, subdivision (d) of Section 64 provides that a “change in ownership” occurs when cumulatively more than 50 percent of ownership interests transfer in a legal entity, but only in a very limited instance. That is after a legal entity receives a change in ownership exclusion pursuant to Section 62(a)(2). This section of law excludes transfers between legal entities and individuals (or between two legal entities) that result solely in a change in the method of holding title and in which proportional ownership interests in each and every piece of real property remain the same after the transfer.

**Change in Ownership Reporting and Discovery.** Section 480.1 requires legal entities to report a reassessable event by filing a “change in ownership statement” with the Board of Equalization (Board) within 45 days from the date of change in control under Section 64(c). Section 480.2 makes a similar requirement when there is a change in ownership under Section 64(d). However, there is no penalty for not reporting these reassessable events. A penalty applies only if after the Board makes a written request to file a statement the legal entity does not respond within 45 days. Section 482(b) outlines the penalties to be charged if the statement is not filed within 45 days of the Board’s request. The penalty is:

- 10 percent of the taxes applicable to the new base year value reflecting the change in control or change in ownership of the real property owned by the legal entity, or
- if no change in control or change in ownership occurred, 10 percent of the current year's taxes on that property shall be added to the assessment made on the roll.

The penalties for failure to respond apply whether or not it is determined that a change in ownership actually occurred. However, the penalty is automatically extinguished if

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the person or legal entity files a complete statement no later than 60 days after the date on which the person or legal entity is notified of the penalty.

To help discover changes in ownership of legal entities, information is requested on the state income tax return pursuant to Section 64(e). The Franchise Tax Board (FTB) provides this information to the Board for follow up.

Under existing law, Section 484 provides the assessor with a variety of mechanisms to secure change in ownership information including the authority to seek a court order to obtain information or records pursuant to Section 468. Government Code Section 15613 authorizes the Board to issue subpoenas for the attendance of witnesses or the production of books, records, accounts, and papers.

**Escape Assessments.** Existing law provides that an escape assessment may be issued for each year the property was underassessed pursuant to Section 532(b).

### **Proposed Law**

The bill modifies a number of provisions related to legal entity change in ownership discovery and reporting procedures. Specifically:

- Deletes the specific detailed question concerning a legal entity change in ownership that must be included by the Franchise Tax Board (FTB) on state income tax forms and substitutes a more general statement. Also adds a question as to whether the legal entity owns any real property in California. §64
- Related to the penalty resulting when a legal entity does not timely file a change in ownership statement with the Board after a written request specifies that the penalty notice will be issued in accordance with Section 534. §483(c)(1)
- Related to the available penalty abatement process when a legal entity files a change in ownership statement late, due to a “reasonable cause.”
  - Clarifies the use of the term “board” and specifies the role of the board of supervisors and the Board of Equalization in the penalty abatement process.
  - Specifies some types of reasonable cause, including that the Board failed to send the statement to the correct address.
  - Grants assessors the authority to independently abate penalties for late filed statements with the Board if county boards of supervisors adopt an ordinance.
- Amends an informational notice sent to legal entities which would state that if it fails to respond to a written request to file a change in ownership statement and the assessor has information that a change in ownership has occurred, that the assessor will reassess the property based on an estimate of the value of the property. §480.2
- Clarifies that for purposes of escape assessments, a legal entity’s filing of the change in ownership statement, as required by Section 480.1 or 480.2 with the Board must be “timely” and defines timely. §532

### **In General**

**Legal Entity Change in Ownership – Discovery.** The Board’s Legal Entity Ownership Program (LEOP) assists assessors in discovering changes in control or changes in ownership of legal entities under Section 64(c) and (d) that might not otherwise be

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captured by a county's own discovery systems. This function began in January 1983 as a result of AB 151 (Ch. 1141, Stats. 1981) which added Sections 480.1 and 480.2 to require the Board to participate in the discovery of changes in control of corporations, partnerships, and other legal entities. It was recognized that such events, which are not evidenced by a recorded document, would fall outside the parameters of assessors' normal means for discovering changes in ownership. Discovery of these changes can be difficult because ordinarily there is no recorded deed or notice of a transfer of an ownership interest in a legal entity. The basic LEOP operations include:

- Following up on legal entities that have reported a change in ownership on their income tax returns.
- Monitoring business publications, such as *Mergers & Acquisitions* and the Wall Street Journal.
- Sending a "[Statement of Change in Control or Ownership of Legal Entities](#)" to identified entities.
- Processing completed statements to determine whether there has been a change in control or ownership.
- Notifying county assessors of changes in control and ownership identified by these efforts.

## COMMENTS

1. **Sponsor and Purpose.** The California Assessors' Association is sponsoring this measure to improve change in ownership reporting by corporations and legal entities.
2. **Key Amendments.** The **August 21** amendments made three nonsubstantive grammatical amendments. The **June 29** amendments gutted the provisions of this bill as introduced which related to various Board of Equalization administrative provisions.
3. **Changes in ownership or control of a legal entity triggered due to transfers of ownership interests in legal entities (Section 64(c) and (d)) are not easy to discover.** Unlike transfers of interests in real property, a deed is not recorded with the county recorder nor is there any other type of public notice that the Board or the assessor could use to monitor and track transfers of ownership interest in a legal entity.
4. **The law requires legal entities to report changes in ownership under Section 64(c) and (d) by filing a change in ownership statement within 45 days of the event, but there is no penalty if they fail to do so.** Under current law, a penalty is incurred only if a legal entity does not respond to a written request by the Board to file a statement and the entity is given two opportunities to provide information before a penalty is levied. This bill does not change any penalty provision for not reporting a change in ownership. It does expand a required notice to legal entities that their property may be reassessed even though they do not respond to the notice when the assessor has information that a change in ownership has occurred. The reassessment will be based on the assessor's estimate of value.
5. **Penalty Abatement Process.** With respect to the existing penalty abatement process, this bill clarifies the use of the term "board" and specifies the role of the

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board of supervisors and the Board of Equalization in the penalty abatement process. There is some uncertainty as to which “board” is being referred to in various sections of the code that this bill would clarify.

6. **Penalty Abatement – County Assessors.** This bill would give county assessors the authority to abate penalties for late filed statements. This would only apply if their board of supervisors adopts, an ordinance or resolution making this provision applicable.
7. **Related Legislation.** This year, SB 367 (Escutia) contained similar provisions. That measure was ultimately gutted and enacted with provisions falling outside the scope of this agency.

### **COST ESTIMATE**

This bill would not materially impact the Board’s costs.

### **REVENUE ESTIMATE**

This bill has no direct revenue impact.

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